

STATE OF ALABAMA
LEASE PURCHASE AGREEMENT
FOR FINANCIAL INSTITUTIONS

This Agreement is executed and entered into this ____ day of _____ 20 ____,
by and between _____,
(hereinafter referred to as Lessor), and
_____, of the State of Alabama (hereinafter referred to as
Lessee). The term "Agreement," hereinafter shall refer to and incorporate
by reference any and all documents identified herein as part of this
Agreement.

1. **LEASED PROPERTY:** Lessor leases to Lessee and Lessee leases from
Lessor the equipment described in the attached Equipment Schedule(s) or
purchase order(s), which is hereafter called the "Property".

2. **TERM OF LEASE:** Any term or renewed annual period of this lease is
subject to termination pursuant to paragraphs 13, 15, 16, and 24 of
this Agreement. The initial term hereof shall commence on the date
stated above and shall expire on September 30, 20 _____. The remaining
term of this lease will be for a period of _____ months which shall be
divided into _____ (), renewable periods hereinafter referred to as
"renewal term(s)" that coincide with the dates of the fiscal year of
the State of Alabama. The first renewal term is scheduled to begin on
_____. As long as Lessee continues to make the payments
herein, this Agreement shall be automatically renewed at the end of
each renewal term for an additional separate annual period or renewal
term upon the same terms and conditions as stated herein.

Subject to paragraphs 13, 15, 16, and 24 hereof, this Agreement and the last
separate renewal term shall terminate at midnight on _____, unless
otherwise extended by mutual agreement of the parties.

Revised June 9, 1997

3. **PAYMENTS:** Lessee agrees to make payments as shown on the attached
Payment Schedule on the last day of each month of the initial term,

until all the payments in the initial term have been fully paid, unless the Lessee exercises its option to purchase or to terminate as set forth in paragraphs 13, 15, 16, and 24. The payments due during any renewal term that is commenced will be paid on the last day of each month of said renewal term, until each payment in said period has been fully paid, unless Lessee during said renewal term exercises its options to purchase or to terminate as set forth in paragraphs 13, 15, 16 and 24. All payments shall be paid to the lessor located at its offices located at _____, or at such other place as Lessor may designate by written notice to Lessee. The amount of each monthly payment is shown on the attached Payment Schedule.

4. **PERMITS:** Lessee shall obtain all permits and licenses necessary for the operation, possession, and use of the property. Lessee shall comply with all laws, rules, regulations, and ordinances applicable to the use, possession, and operation of said property.

5. **TAXES:** Lessee agrees to pay to Lessor, or to reimburse Lessor for, as the case may be, as an additional item of rent, all licenses, sales, use, personal property, or other taxes (except for and not including income taxes) assessed, levied, or imposed with respect to the Property, because of Lessee's interest in the Property, during any term of this Agreement whether assessed, levied, or imposed after the effective date of this Agreement against either Lessee or Lessor. Lessor or Lessee may in good faith and by appropriate proceedings contest any such tax, or tax reimbursement, so long as such proceedings do not involve any danger of sale, forfeiture, or loss of the Property or any interest herein.

6. **USE:** The Lessee will exercise due care in the use, operation, and maintenance of the property and will not use, operate, or maintain the property improperly, carelessly, or in violation of any applicable law, or for a purpose or in an manner contrary to the normal operation or need of the Lessee.

7. **MAINTENANCE:** After the expiration of the manufacturer's or vendor's warranty period applicable to the property, the Lessee shall provide for the service, repair, and maintenance of the property at its own expense so as to keep the property in good condition, repair, and

working order, ordinary wear and tear excepted. Any maintenance/service agreement entered into by the Lessee shall provide for preventive and remedial maintenance which will include the replacement of any and all portions of the property which may from time to time become worn out or rendered unfit for use due to the normal operation of the property. All such replaced parts, mechanisms, and devices shall be free and clear of liens and encumbrances and rights of others and, when substituted or integrated into the property, said parts shall become a part thereof and shall be covered by the terms of this Agreement to the same extent as the property originally acquired hereunder.

8. **SUPPLEMENTAL EQUIPMENT: ALTERATIONS:** Lessee may attach or install such miscellaneous or supplemental equipment as may be necessary to use the property for its intended purposes. All such equipment integrated with the property may be removed by Lessee upon termination of this Agreement, in a manner so that the removal will not damage the property of the Lessor. Lessee shall not make any other alterations, changes, modifications, additions, or improvements to the property without the prior written consent of Lessor except those needed to comply with Lessee's obligations under paragraph 7. The Lessee shall have the right to remove all attachments or supplemental equipment at any time so long as the removal is accomplished in the manner stated above.

9. **LIENS:** Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the property or any interest therein except the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or claim not excepted above if the same was created because of the Lessee's actions or omissions.

10. **INSURANCE:** The Lessee Agrees to insure the Property under the standard policy issued by the State Insurance Fund to protect against losses covered by said policy. The Lessee further agrees to list the Lessor or its assignee as a loss payee under the terms of said policy. The risk of loss of said Property caused by the negligence of the Lessee's employees or agents shall be borne by the Lessee if the same is not covered by the terms of the above - stated policy. In the event the Property, or any portion thereof, is destroyed, the Lessee and the

Lessor agree that the proceeds received from any and all insurance policies shall at the option of the Lessee be utilized as follows:

- a) to purchase replacements for the Property, or any portion thereof, which was destroyed, or
- b) to satisfy the balance due on the option purchase price at the time of destruction in the event all the property is totally destroyed; or
- c) to reduce the balance due on the option to purchase price at the time of the destruction in a prorata amount if only a segregable portion of the property is destroyed.

Any of the Property which is replaced pursuant to the terms of this paragraph shall be covered by the terms of this Agreement to the same extent as the Property originally acquired hereunder.

11. DAMAGE TO OR DESTRUCTION OF PROPERTY: If, after delivery of the property of Lessee, all or any part of the property is lost, stolen, destroyed, or damaged beyond repair and compensation cannot be recovered under the terms of the insurance policy referred to in paragraph 10, the Lessor shall be limited in its attempts to recover any damages caused by acts or omissions of the Lessee, its agents or employees by the filing of a claim before the Board of Adjustment of the State of Alabama. Lessee does not assume liability or responsibility under any circumstances if such loss, destruction, or damage is a result of Lessor's or manufacturer's negligence, defective equipment, or other acts, omissions, or causes beyond the control of the Lessee. Further, the Lessee does not waive any rights it might have to contest or oppose any claim filed before the Board of Adjustment.

12. DELIVERY: ASSIGNMENT OF AGREEMENT AND PAYMENTS: SETOFF

- a) Lessor will be responsible for paying all freight and transportation charges for shipment of each piece of property to its destination point and accepts any responsibility for the property's safe delivery and bears all risk of loss while the property is enroute to its destination point.
- b) It is understood and agreed by Lessee that Lessor may assign this Agreement, or any rights under the Agreement, in whole or in part, to a third party so long as said assignment is made in accordance with this Agreement, 41-16-29 Code of Alabama 1975 and

any other applicable law, whether in effect now or at the time of the assignment. In the event only the right to receive payments is assigned, the assignee shall have no responsibility to Lessee, unless hereinafter provided, other than to accept those monies due the Lessor. Upon assignment of any other rights under this Agreement, the third party assignee shall have all those same rights as the Lessor and shall be bound by all the terms of this Agreement. The assignment by the Lessor of any or all rights under this Agreement shall not release the Lessor from any obligation contained herein and the Lessor shall remain primarily liable to the Lessee or its successor. It is further agreed that if Lessor or its assignee is not the manufacturer of the property then they will join and cooperate with Lessee or its successor in the prosecution of any claim arising under the terms of any warranties or maintenance/service agreements relating to the property. The Lessee shall have total control of the prosecution of any such claim and shall also have the responsibility for the payment of the costs incurred as a result of said prosecution. The Lessor and any assignee agree to cooperate fully with the Lessee and shall provide the lessee with any and all information in their possession which the Lessee determines that it requires in the prosecution of any claim.

13. **TRANSFER OF TITLE: PURCHASE OPTION:** Upon the tender of all payments for the initial term and all renewal terms of this Agreement, title to the property shall pass to the Lessee without the payment of any further consideration. In addition, Lessee shall have the early option to purchase the property upon payment of the early option to purchase price, which shall be equal to the straight amortized principal balance as set forth in the attached Payment Schedule, which is due on the date the early option to purchase is to be exercised. This early option to purchase may be exercised by giving the Lessor thirty (30) days prior written notice of Lessee's intent to exercise the same, specifying the date upon which the early option to purchase shall be consummated. The Lessor or any assignee, upon tender of all the payments for the initial term and all renewal terms or the early option to purchase price, shall deliver to the Lessee a bill of sale and/or Certificate of Title transferring title of the property to the Lessee and containing the following warranty: "TO HAVE AND TO HOLD the same unto the Lessee and its assigns forever. The Lessor or assignee,

for itself, its heirs, executors, administrators, successors, and assigns covenants and agrees with the Lessee or its successor that it is the lawful owner of said property, chattels, machinery, or equipment herein above described, and that it has the lawful right to sell and convey the same and the said property is free from all liens and encumbrances; and that the Lessor will forever warrant and defend the title to the same against the lawful claims and demands of all persons or entities whatsoever who may claim the whole, any part thereof, or any right therein." The Lessor shall also concurrently with the transfer of title assign or convey to the Lessee all warranties or other agreements applicable to the property. The early option to purchase referred to herein is given to the Lessee as further and additional consideration of its execution of this Agreement.

14. **AUTHORITY:** Lessee represents and warrants that it has the power and authority to enter into this Agreement, and all procedures required for the authorization and execution of this Agreement, including competitive bidding, if applicable, have been taken or complied with, that all payments which are made hereunder will be paid out of funds which are legally available for such purposes and that Lessee has funds appropriated to it or in a revolving fund, or has encumbered funds which have been appropriated to it, for the payment of amounts due during the initial term of this Agreement.

Lessee will do all things lawfully and reasonably within its power to attempt to obtain and maintain funds from which the payments shown on the attached Payment Schedule may be made, including making a request for such payments in each annual budget submitted for the purpose of obtaining funding, unless the payments are made from funds accumulated in a revolving fund maintained by the Lessee. The Lessee further states that there are no known circumstances existing at this time affecting the Lessee that could reasonably be expected to alter its foreseeable need for the property or adversely affect its willingness to budget funds, if applicable, for the payment of amounts due hereunder.

15. **NON-APPROPRIATION OF FUNDS:** Lessee covenants that the equipment leased hereunder is of essential use to its proper, efficient, and economic operation, and that the functions performed by the equipment cannot and will not be transferred to other equipment now available or which may be subsequently acquired by the Lessee during the term of

this lease. In spite of the foregoing, in the event funds are not available to the Lessee from funds appropriated to the Lessee by the Legislature of the State of Alabama, or from other sources, to make any payments due during the initial term or any renewal term of this Agreement, then the Lessee shall have the option to terminate this Agreement. In the event the Lessee exercises its option to terminate given under this paragraph, or under any paragraph in this Agreement, there shall be no obligation on the Lessee to pay any further payments due hereunder and this Agreement shall become null and void upon the mailing of the notice of termination. No right of action or damage shall thereafter accrue to the benefit of Lessor, its successors or assignees, for any further payments. There shall also be no acceleration of any further payment due hereunder or other like obligation of Lessee by reason of the termination of this Agreement, nor shall there be any penalties assessed against Lessee therefor. Under no circumstances shall the commitments or obligations contained in this Agreement constitute a debt of the State as prohibited by Section 213, Constitution of Alabama 1901, as amended by Amendment No. 26, or other provision thereof, whether the same is currently in effect or becomes effective during any term of this Agreement.

16. **PRORATION:** Notwithstanding any provision of this Agreement to the contrary, in the event of failure of the Lessee to make any payment hereunder as a result of the unavailability of sufficient funds because of the proration of appropriated funds pursuant to 41-4-90 of the Code of Alabama 1975, then the Lessee shall have the option of terminating this Agreement by mailing notice, thereof and such termination shall become effective on the date set forth in the notice and shall have the same results or effects as a termination accomplished pursuant of paragraph number 15.

17. **NOTIFICATION OF LESSOR:** If the provisions of paragraphs 15 or 16 are utilized to terminate this Agreement, the Lessee will immediately give the Lessor, or its assignee, notice of its action and the reasons therefor.

18. The Lessee agrees to the extent allowed by the laws and Constitution of the State of Alabama that, if this Agreement is terminated pursuant to Paragraph 15 or 16, it will not purchase similar equipment that performs the same functions as the property performs for

a period of one year from the date of termination, only if it has first been judicially determined and declared that the Lessee's agreement to abstain from purchasing similar equipment is enforceable.

The parties agree that the venue for any action relating to this Agreement shall be in Montgomery County, Alabama.

19. **ASSIGNMENT AND SUBLEASE BY LESSEE:** Lessee shall not assign, transfer, or pledge this Agreement, the property or any part thereof, or any interest therein, without the consent of the Lessor, which shall not be unreasonably withheld.

20. **DEFAULT:** If the Lessee fails to pay to Lessor any amount herein stipulated that is due and payable, or fails to perform promptly any of the other covenants or obligations contained herein, and such default or failure to perform continues for a period of thirty (30) days after written notice of such failure to pay or perform is received by the Lessee, then the Lessor shall have the right to pursue the following remedies:

- a) The Lessor may terminate this Agreement and enter upon the premises of Lessee during normal business hours, after giving Lessee 30 days prior written notice of its intention to do so , and take possession of the Property; or
- b) The Lessor may prosecute a claim for the monthly payments due up to the time of the termination of this Agreement by filing the same with the board of Adjustment of the State of Alabama. However, the Lessee does not waive its rights to oppose or defend any claim filed against it; or
- c) The Lessor shall have all other rights and remedies to which Lessor may be entitled at law or in equity.

21. **WAIVER:** It is hereby expressly adopted as the intent and agreement of the contracting parties to this Agreement that no individual employee, agent, or official of the State of Alabama shall have any personal liability for the fulfillment of the terms, provisions, and conditions of this Agreement. Lessor hereby expressly waives for all purposes any claims it may have against any official, agent, or employee of the State of Alabama for personal liability arising from or in connection with this Agreement.

22. **WARRANTIES:** All property shall be covered by the initial

manufacturer's or vendor's warranty from the date of delivery and acceptance. After the expiration thereof Lessee shall provide for the service, repair, and maintenance of the property at its own expense as provided in paragraph 7 hereof.

23. **NOTICES:** All notices or demands to be given under this agreement shall be made in writing and mailed to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered form, with postage fully prepaid.

24. **MISCELLANEOUS:**

- a) Lessor or its authorized representatives may inspect the property and the books and records of Lessee with respect thereto during regular business hours.
- b) No covenant or obligation to be performed under this Agreement may be waived except by written consent.
- c) This Agreement shall be construed and governed in accordance with the Laws and Constitution of the State of Alabama.
- d) This Agreement with the Equipment Schedule(s), Purchase Order(s), and Payment Schedule(s), and additional commitments, covenants, or warranties of the Lessor contained in the Lessor's response to Invitation to Bid No. _____, which do not conflict with the provisions contained herein, constitute the entire agreement between the parties and the same shall not be modified, amended, altered, or changed except by a written document signed by the parties. In the event the Lessor or its assignee defaults under any of the provisions of this Agreement, the Lessee may terminate the same by giving thirty (30) days prior written notice or may cease paying the monthly payments due hereunder.
- e) If any provision or portion of this Agreement is found to be unenforceable, the same shall not invalidate the remaining provisions of the Agreement.

25. **ADDITIONAL NEGOTIABLE PROVISION:** Lessor and Lessee agree that by the execution of this Lease/Purchase Agreement the Lessee's intent was to purchase the equipment referred to herein on a time basis rather than a cash purchase. Therefore, in the event of termination as

referred to in paragraphs 15 and 16 herein, by mutual agreement, Lessee and Lessor may restructure this lease for an additional period of time if the availability of funds is established at a level that will allow an orderly amortization of the balance due at the time of such termination plus any additional charges associated with the restructuring of the lease.

IN WITNESS WHEREOF, the parties have executed this Lease Purchase Agreement as of the day and year shown above.

Witness:

LESSOR:

By _____

Its _____

Witness:

LESSEE:

By _____

Its _____

APPROVED FOR LEGALITY:

as Attorney for the
State of Alabama
Department of Finance

APPROVED:

as Director of Finance

APPROVED:

as Governor of the
State of Alabama